

PART IV
THE DEBTOR: DUTIES AND BENEFITS

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Rule 4001-1. Relief from the Automatic Stay or Prohibiting or Conditioning the Use, Sale, or Lease of Property; Confirming Termination of the Stay.

(a) Motion for relief from the automatic stay *with notice*.

(1) Content. A motion for relief from the automatic stay shall state the specific subsection or subsections of 11 U.S.C. § 362(d) under which relief is sought; include a description of any property with respect to which relief is sought; and include specific facts that demonstrate the movant is entitled to relief from the automatic stay. A motion for relief from the automatic stay shall not be combined with a request for relief from the co-debtor stay under 11 U.S.C. § 1301(c).

(2) Waiver of automatic termination provisions. Unless a motion for relief from the automatic stay includes a declaration that the movant is specifically relying on the time limitations imposed by 11 U.S.C. § 362(e), those time limitations are deemed waived for good cause under 11 U.S.C. § 362(e)(2)(B)(ii), and any hearing on the motion will be held on the first available hearing date for the division in which the case is venued.

(3) Service and notice. Unless relief from the automatic stay is sought *ex parte* pursuant to Fed.R.Bankr.P. 4001(a)(2) and Bankr. D.S.D. R. 4001-1(c), the motion and a notice of motion shall be served on parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion.

(b) Motion to prohibit or condition the use, sale, or lease of property *with notice*. A motion to prohibit or condition the use, sale, or lease of property shall include a description of the property with respect to which relief is sought, a description of any liens or other encumbrances against the property, and specific facts that demonstrate the movant is entitled to the prohibition or condition requested. Unless such relief is sought *ex parte* pursuant to Fed.R.Bankr.P. 4001(a)(2) and Bankr. D.S.D. R. 4001-1(c), the motion and a notice of motion shall be served on parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion.

(c) *Ex parte* motion for relief from the automatic stay or to prohibit or condition the use, sale, or lease of property. An *ex parte* motion for relief from the automatic stay under 11 U.S.C. § 362(f) or to prohibit or condition the use, sale, or lease of property shall comply with Fed.R.Bankr.P. 4001(a)(2)(B), except the Court will serve any order granting *ex parte* relief. A notice of motion shall not be filed with the motion.

(d) Motion to confirm termination or absence of automatic stay. A motion seeking confirmation of the termination or absence of the automatic stay under 11 U.S.C. § 362(c) or § 362(j) and a notice of motion shall be served on parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion.

(e) Agreement regarding relief from the automatic stay or to prohibit or condition the use, sale, or lease of property when a motion for such relief has been filed. If the movant and all parties who timely objected to a properly filed and served motion for relief from the automatic stay or motion to prohibit or condition the use, sale, or lease of property reach an agreement regarding such relief that does not exceed the scope of the motion, the agreement, if reduced to writing, shall be filed with the Court, and an agreed proposed order shall be submitted to the Court under Bankr. D.S.D. R. 9021-1 after the last date for objections to the motion has passed. Upon entry of the agreed order, any previously scheduled hearing on the motion will be deemed moot. If the agreement exceeds the scope of the motion, the agreement shall be noticed for objections in compliance with Bankr. D.S.D. R. 9019-1(b).

(f) Agreement regarding relief from the automatic stay or to prohibit or condition the use, sale, or lease of property when a motion for such relief has not been filed. If parties in interest reach an agreement regarding relief from the automatic stay or to prohibit or condition the use, sale, or lease of property before a motion for such relief has been filed, a motion to approve the agreement and a notice of motion shall be served on parties in interest. If the agreement has been reduced to writing, a copy of the agreement shall be attached to the motion. The notice shall conform to Bankr.

D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion.

(g) Proposed order for relief from the automatic stay. If a motion for relief from the automatic stay is filed with the Court, a proposed order that strictly conforms to the sample at Appendix 4A shall be submitted to the Court with the motion.

REFERENCES: 11 U.S.C. §§ 362 and 363; Fed.R.Bankr.P. 4001. *Compare* Bankr. D.S.D. R. 4001-4 regarding relief from the co-debtor stay under 11 U.S.C. § 1301(c).

Practice Pointers: If any party is served by mail, the notice periods stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

A sample motion for relief from the automatic stay and a variety of sample orders granting relief from the automatic stay in situations not addressed by the sample order at Appendix 4A (*e.g.*, granting relief from the automatic stay and compelling abandonment, granting relief from the automatic stay following a hearing, granting relief from the automatic stay after an objection or other response is withdrawn, and granting relief following a failure to comply with the terms and conditions established in an earlier order) are available on the Court's website at www.sdb.uscourts.gov.

Rule 4001-2. Authority to Use Cash Collateral.

(a) Motion for authority to use cash collateral (regular notice). A motion for authority to use cash collateral shall comply with Fed.R.Bankr.P. 4001(b)(1)(B) and shall conform to the sample at Appendix 4B. Unless preliminary authority is sought pursuant to Fed.R.Bankr.P. 4001(b)(2), the motion and a notice of motion shall be served on parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion.

(b) Preliminary hearing. A request for a preliminary hearing on a motion for authority to use cash collateral pursuant to Fed.R.Bankr.P. 4001(b)(2) shall be reflected in the caption of the motion by the addition of the phrase "and Request for Preliminary Hearing" to the title. The motion for authority to use cash collateral and request for preliminary hearing shall conform to the sample at Appendix 4C and shall include, in a separate paragraph:

(1) a specific statement of the immediate and irreparable harm the estate will suffer if the debtor is not permitted to use cash collateral pending a final hearing on the motion;

(2) the specific amount of cash collateral needed during the preliminary notice period following service of the motion and notice of motion; and

(3) the source(s) of the cash collateral and an offer of adequate protection, if different than the source(s) or the offer set forth pursuant to Fed.R.Bankr.P. 4001(b)(1)(B) and paragraph (a) above.

If the request for preliminary hearing is granted, the Court's order will set deadlines for responses and, if necessary, a preliminary hearing. The order will constitute the notice of the motion and shall be served by the movant as directed by the Court in the order.

(c) Agreement regarding authorization to use cash collateral following a motion for such authority. If the debtor and all parties who timely objected to a properly filed and served motion for authority to use cash collateral reach an agreement regarding such relief that does not exceed the scope of the original motion, the agreement, if reduced to writing, shall be filed with the Court, and an agreed proposed order shall be submitted to the Court under Bankr. D.S.D. R. 9021-1 after the last date for objecting to the motion has passed. Upon entry of the agreed order, any previously scheduled hearing on the motion will be deemed moot. If the agreement exceeds the scope of the motion, the agreement shall be noticed for objections in compliance with Bankr. D.S.D. R. 9019-1(b).

(d) Agreement regarding use of cash collateral when a motion for authority to use cash collateral has not been filed. If parties in interest reach an agreement regarding the use of cash collateral before a motion for such relief has been filed, a motion to approve the agreement and a notice of motion shall be served on parties in interest. If the agreement has been reduced to writing, a copy of the agreement shall be attached to the motion. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion.

(e) Proposed orders granting authority to use cash collateral. A proposed order granting preliminary authority to use cash collateral shall conform to the sample at Appendix 4D. A proposed order granting final authority to use cash collateral shall conform to the sample at Appendix 4E.

REFERENCES: 11 U.S.C. § 363; Fed.Rs.Bankr.P. 2002(a)(6), 2002(c)(1), and 4001.

Practice Pointer: If any party is served by mail, the notice periods stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

Rule 4001-3. Authority to Obtain Credit.

(a) Motion for authority to obtain credit (regular notice). A motion for authority to obtain credit shall comply with Fed.R.Bankr.P. 4001(c)(1)(B); shall conform to the sample at Appendix 4G; and shall include as an attachment a statement of the debtor's projected income and projected expenses for the time during which the credit is to be extended. Unless preliminary authority is sought pursuant to Fed.R.Bankr.P. 4001(b)(2), the motion and a notice of motion shall be served on all creditors and other parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion.

(b) Preliminary hearing. A request for a preliminary hearing on a motion for authority to obtain credit pursuant to Fed.R.Bankr.P. 4001(c)(2) shall be reflected in the caption of the motion by the addition of the phrase "and Request for Preliminary Hearing" to the title. The motion for authority to obtain credit and request for preliminary hearing shall conform to the sample at Appendix 4H and shall include, in a separate paragraph:

(1) a specific statement of the immediate and irreparable harm the estate will suffer if the debtor is not permitted to obtain credit pending a final hearing on the motion;

(2) the specific amount of credit needed during the preliminary notice period following service of the motion and notice of motion; and

(3) the source(s) and terms of the credit and an offer of adequate protection, if different than the source(s) or the offer set forth pursuant to Fed.R.Bankr.P. 4001(c)(1)(B) and paragraph (a) above.

If the request for preliminary hearing is granted, the Court's order will set deadlines for responses and, if necessary, a preliminary hearing. The order will constitute the notice of the motion and shall be served by the movant as directed by the Court in the order.

(c) Agreement regarding authority to obtain credit following a motion for such authority. If the debtor and all parties who timely objected to a properly filed and served motion for authority to obtain credit reach an agreement regarding such relief that does not exceed the scope of the original motion, the agreement, if reduced to writing, shall be filed with the Court, and an agreed proposed order shall be submitted to the Court under Bankr. D.S.D. R. 9021-1 after the last date for objecting to the motion has passed. Upon entry of the agreed order, any previously scheduled hearing on the motion will be deemed moot. If the agreement exceeds the scope of the motion, the agreement shall be noticed for objections in compliance with Bankr. D.S.D. R. 9019-1(b).

(d) Agreement regarding authority to obtain credit when a motion for authority to obtain credit has not been filed. If parties in interest reach an agreement regarding the obtaining of credit before a motion for such relief has been filed, a motion to approve the agreement and a notice of motion shall be served on parties in interest. If the agreement has been reduced to writing, a copy of the agreement shall be attached to the motion. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion.

(e) Proposed orders granting authority to obtain credit. A proposed order granting preliminary authority to obtain credit shall conform to the sample at Appendix 4H. A proposed order granting final authority to obtain credit shall conform to the sample at Appendix 4I.

REFERENCES: 11 U.S.C. § 364; Fed.R.Bankr.P. 4001.

Practice Pointer: If any party is served by mail, the notice periods stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

Rule 4001-4. Relief from the Co-debtor Stay. A motion for relief from the co-debtor stay shall specifically reference 11 U.S.C. § 1301(c) in the title of the caption and in the body of the motion; include specific facts that demonstrate the movant is entitled to relief from the co-debtor stay; and be served with a notice of motion on parties in interest, including the co-debtor and the co-debtor's attorney, if known. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion. A motion for relief from the co-debtor stay shall not be combined with a request for relief from the automatic stay under 11 U.S.C. § 362(d).

REFERENCES: 11 U.S.C. § 1301(c). Compare Bankr. D.S.D. R. 4001-1 regarding relief from the automatic stay under 11 U.S.C. § 362(d).

Practice Pointer: If any party is served by mail, the notice period stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

Rule 4003-1. Objection to Claimed Exemptions.

(a) Objection. An objection to a debtor's claimed exemptions and a notice of objection shall be served on parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for responses that is 14 days after service of the objection and notice of objection.

(b) Required response. A response to an objection to claimed exemptions shall be filed with the Court and served in compliance with Bankr. D.S.D. R. 9014-1). An amendment to a schedule will **not** be deemed a response to an objection to claimed exemptions.

REFERENCES: 11 U.S.C. § 522; S.D.C.L. §§ 43-45-1 *et seq.*, 43-31-1 *et seq.*, and 43-12-115; Fed.R.Bankr.P. 4003.

Practice Pointers: If any party is served by mail, the notice period stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

If a debtor believes an amendment to a schedule will resolve the objection to claimed exemptions, the debtor must file simultaneously both a response to the objection and the amendment to schedule. See Bankr. D.S.D. R. 9014-1(c).

Rule 4003-2. Avoiding a Lien on or Other Transfer of Exempt Property.

(a) Motion. A motion to avoid a lien on or other transfer of exempt property under 11 U.S.C. § 522(f) shall conform to the sample at Appendix 4J and shall demonstrate the lien or other transfer sought to be avoided impairs an exemption to which the debtor is entitled under 11 U.S.C. § 522(b). The motion and a notice of motion shall be served on parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion.

(b) Proposed order. If a motion to avoid a lien on or other transfer of exempt property is filed with the Court, a proposed order that conforms to the sample at Appendix 4K shall be submitted to the Court with the motion.

REFERENCES: 11 U.S.C. § 522; Fed.Rs.Bankr.P. 4003(d) and 9014.

Practice Pointer: If any party is served by mail, the notice period stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

Rule 4004-1. Extension of Time to File a Denial of Discharge Complaint or a Reaffirmation Agreement or to Defer Entry of Discharge.

(a) Motion to extend time to file a denial of discharge complaint. A motion to extend the time to file a complaint seeking the denial of a debtor's discharge under 11 U.S.C. § 727 and Fed.R.Bankr.P. 4004 shall be filed with the Court before the original deadline has expired; shall state the specific extension requested; and shall

demonstrate cause for the extension requested. The motion and a notice of motion shall be served on all creditors and other parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is seven days after service of the motion and notice of motion.

(b) Motion for extension of time to file reaffirmation agreement. A motion to extend the time to file a reaffirmation agreement under Fed.R.Bankr.P. 4008(a) shall be filed with the Court before the original deadline has expired; shall state the specific extension requested; and shall demonstrate cause for the extension requested. The motion shall be served on parties in interest. No notice of the motion is required.

(c) Motion by debtor to defer entry of the order of discharge. A motion under Fed.R.Bankr.P. 4004(c)(2) to defer the entry of the order of discharge for 30 days, or to a date certain after any initial 30-day extension, shall demonstrate cause for the deferral requested. The motion shall be served on parties in interest. No notice of the motion is required.

REFERENCES: 11 U.S.C. §§ 727 and 1141(d); Fed.R.Bankr.P. 4004(b) and (c).

Practice Pointers: If any party is served by mail, the notice period stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

Section 524(c) requires a reaffirmation agreement to be "made" (*i.e.*, signed and dated by all parties) before the discharge order is entered. A motion for extension of time to *file* a reaffirmation agreement under paragraph (b) does *not* extend the time within which a reaffirmation agreement may be *made*. If a reaffirmation agreement has not been made, the debtor will need to file a motion to defer the entry of the order of discharge under paragraph (c) to extend the time within which that can be accomplished.

Rule 4007-1. Extension of Time to File a Dischargeability Complaint. A motion to extend the time to file a complaint seeking a determination of the dischargeability of a particular debt under 11 U.S.C. § 523(c) shall be filed with the Court before the original deadline has expired; shall state the specific extension requested; and shall demonstrate cause for the extension requested. The motion and a notice of motion shall be served on parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is seven days after service of the motion and notice of motion.

REFERENCES: 11 U.S.C. §§ 523(c), 1141(d)(2), 1228(a)(2) and (c)(2), and 1328(a)(2) and (c)(2); Fed.R.Bankr.P. 4007(c) and (d).

Practice Pointer: If any party is served by mail, the notice period stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

Rule 4008-1. Reaffirmation Agreement; Notice of Rescission.

(a) Motion not required. Notwithstanding any suggestion to the contrary in any procedural form issued by the Administrative Office of the United States Courts, a debtor need not file a motion seeking approval of a reaffirmation agreement.

(b) Overcoming a presumption of hardship. Any attempted rebuttal of a presumption of undue hardship shown in Part D of a reaffirmation agreement that is based in whole or in part on the debtor's receipt of financial assistance from another person shall include, as an attachment to the reaffirmation agreement, an affidavit of the person from whom such financial assistance will be received. The affidavit shall state the amount of financial assistance the affiant will provide and demonstrate the affiant's financial ability to provide that amount of financial assistance.

(c) Notice of rescission. A debtor's notice of rescission regarding a reaffirmation agreement shall conform to the sample at Appendix 4M. The original notice of rescission shall be served on the creditor whose debt was reaffirmed, and a copy of the notice of rescission shall be served on the creditor's attorney, if known. A certificate of service, with a copy of the notice of rescission attached, shall be filed with the Court to evidence the debtor's compliance with this rule.

REFERENCES: 11 U.S.C. § 524; Fed.R.Bankr.P. 4008. See Bankr. D.S.D. R. 4004-1(b) regarding a motion to extend the time to file a reaffirmation agreement and the attendant Practice Pointers.

Rule 4072-1. Discharge of Judgments Pursuant to S.D.C.L. § 15-16-20.

(a) Motion, notice, and service. A motion to discharge one or more judgments pursuant to S.D.C.L. § 15-16-20 shall conform to the checklist at Appendix 4M and the sample at Appendix 4N, and shall not be filed until the debtor has been granted a discharge. The motion and a notice of motion shall be served on each judgment holder; the judgment holder's attorney at the time the judgment was entered, if known; the judgment holder's bankruptcy attorney of record, if any; and any party who has filed a notice of appearance who is not electronically served. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion.

(b) Proposed order. If a motion to discharge judgments is filed with the Court, a

proposed order that conforms to the sample at Appendix 4O shall be submitted to the Court with the motion.

(c) Service of order. The Clerk shall provide the debtor one certified copy of any order discharging judgments for each county referenced in the order. The debtor shall serve a certified copy of the order on the clerk of court for each county referenced in the order and shall serve a copy of the order on each judgment holder; the judgment holder's attorney at the time the judgment was entered, if known; the judgment holder's bankruptcy attorney of record, if any; and any party who has filed a notice of appearance who is not electronically served.

REFERENCES: 11 U.S.C. § 524; S.D.C.L. § 15-16-20.

Practice Pointers: If any party is served by mail, the notice period stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

The state court clerks, the United States Trustee, and the case trustee do not need to be served with the motion to discharge judgments.

**PART V
COURTS AND CLERKS**

5005-4	Electronic Filing.
5005-5	Nonpublic Docket Entries.
5005-6	Documents Received from United States Trustee.
5010-1	Reopening a Case.
5070-1	Scheduling a Hearing.
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5080-1	Fees: When Due.
5081-1	Fees: Form of Payment.

Rule 5005-4. Electronic Filing. Any document filed by an attorney must be filed electronically in the manner prescribed in the Court's Electronic Case Filing Administrative Procedures.

REFERENCES: Fed.R.Bankr.P. 5005(a)(2).

Rule 5005-5. Nonpublic Docket Entries. Correspondence to the Court or the Clerk not intended for filing and not necessary for case administration and internal court file management notes shall be maintained as private entries on the docket; shall be deemed placed under seal; and shall not be made available for public inspection.

REFERENCES: E-Government Act of 2002.

Rule 5005-6. Documents Received from United States Trustee. Pursuant to Fed.R.Bankr.P. 5005(c) and unless otherwise ordered, documents erroneously transmitted to the United States Trustee and then forwarded to the Clerk for filing are deemed filed with the Court on the date received by the United States Trustee.

REFERENCES: Fed.R.Bankr.P. 5005(c).

Rule 5010-1. Reopening a Case.

(a) Motion to reopen. A motion to reopen a case shall demonstrate cause for

reopening the case and shall be served on parties in interest. No notice of the motion is required.

(b) Reopening not required. A case need *not* be reopened to:

(1) commence an action related to a discharge, including an action under 11 U.S.C. § 523(a)(3) to determine the dischargeability of a claim that was neither listed nor scheduled; or

(2) obtain a writ of execution pursuant to Fed.R.Bankr.P. 7069 to enforce a judgment determined to be nondischargeable.

REFERENCES: 11 U.S.C. § 350(b); 28 U.S.C. § 1930(a); Fed.Rs.Civ.P. 60 and 69; Fed.Rs.Bankr.P. 4007, 5010, 7069, and 9024.

Rule 5070-1. Scheduling a Hearing.

(a) Hearings scheduled by a party. A party shall obtain a hearing date from the Scheduling Deputy Clerk prior to filing:

(1) a chapter 12 plan and a notice of the confirmation hearing pursuant to Bankr. D.S.D. Rs. 2002-1(c) and 3015-3A;

(2) a modified chapter 12 plan and a notice of the confirmation hearing pursuant to Bankr. D.S.D. Rs. 2002-1(c) and 3015-4A;

(3) a chapter 13 plan and a notice of the confirmation hearing, if the confirmation hearing must be rescheduled pursuant to Bankr. D.S.D. Rs. 2002-1(c) and 3015-3B(b);

(4) a modified chapter 13 plan and a notice of the confirmation hearing, if the confirmation hearing must be rescheduled pursuant to Bankr. D.S.D. Rs. 2002-1(c) and 3015-4B;

(5) an objection to the allowance of a claim and a notice of the hearing on the objection pursuant to Bankr. D.S.D. R. 2002-1(b);

(6) a motion to withdraw as attorney for debtor and a notice of the hearing on the motion pursuant to Bankr. D.S.D. R. 2091-1(b); or

(7) a motion to dismiss a chapter 12 case for failure to complete plan payments and a notice of the hearing on the motion pursuant to Bankr. D.S.D. R. 3072-

1A(a)(4).

(b) Hearings scheduled by the Court. Except as provided in paragraph (a) above, the Court will set any required hearing on a contested matter following the expiration of the deadline for filing an objection or other response to the underlying motion, application, or other request for relief.

REFERENCE: Fed.R.Bankr.P. 9014.

Rule 5071-1. Rescheduling a Hearing, Trial, or Conference. A motion to reschedule a hearing, trial, or conference to a different date, time, or place shall demonstrate cause for the rescheduling and shall state whether other affected parties have consented to the request. The motion shall be served on parties in interest. No notice of the motion is required.

Practice Pointers: A motion to reschedule a matter is made *before* a hearing, trial, or conference begins and is a request that the matter be heard sooner or later than originally scheduled. A motion to continue a matter is made *during* a hearing, trial, or conference and is a request that the matter be concluded at a later date. That is why CM/ECF has an event for a motion to reschedule but does not have an event for a motion to continue.

If an emergency makes it impracticable to file a motion to reschedule, a party may contact the Courtroom Deputy Clerk or the Law Clerk and explain the situation.

Rule 5076-1. Electronic Recordings of Hearings or Trials. Unless otherwise directed by the Court, the Clerk will maintain the original recording of any hearing or trial in the public records of the Court for at least 10 years after the date of the recorded hearing or trial or five years after the case or adversary proceeding is closed, whichever is later.

Rule 5077-1. Recordings and Transcripts of Hearings or Trials; Filing Transcripts of Hearings, Trials, Examinations under Rule 2004, or Depositions; Redacting Certain Information from Transcripts.

(a) Request for recording. A compact disc recording of any hearing or trial may be obtained by calling the Clerk's office in Pierre, providing the case or adversary number and the date of the hearing or trial, and paying the fee prescribed by the Judicial Conference.

(b) Request for a transcript. A transcript of any hearing or trial may be obtained by submitting a transcript order form (available on the Court's website at www.sdb.uscourts.gov) and a check for the fee (made payable to the official transcriber) to:

Clerk, U.S. Bankruptcy Court
225 S. Pierre St., Suite 203
Pierre, SD 57501

A party shall pay a prescribed estimated fee when the transcript is ordered and shall pay the remaining balance before the transcript is delivered. If a transcript order form contains incomplete or inaccurate information, the party requesting the transcript must submit an amended request. Court personnel may not alter a transcript order form.

(c) Filing of and access to transcript of an examination or a deposition.

(1) Filing. If a transcript of an examination under Fed.R.Bankr.P. 2004 or a deposition is prepared, the court reporter shall electronically file a certified copy of the transcript in the case or adversary proceeding designated by the caption of the transcript.

(2) Access. Unless otherwise ordered, once the Clerk files a notice of the filing of the transcript, the transcript will be available for viewing only at the Clerk's public access computer terminal.

(d) Filing and notice of and access to a transcript of a hearing or trial.

(1) Filing. If a transcript of a hearing or a trial is prepared, the official transcriber shall electronically file a certified copy of the transcript in the case or adversary proceeding designated by the caption of the transcript.

(2) Notice of Filing. Upon the filing of the transcript, an electronic Notice of Filing Transcript shall issue, which states:

(A) remote electronic access to the transcript is restricted until a stated date, which shall be 90 days after the transcript is filed with the Court;

(B) the deadline for filing a Notice of Intent to Request Redaction, which shall be seven days after the transcript is filed;

(C) the deadline for filing a Request for Redaction, which shall be 21 days after the transcript is filed with the Court; and

(D) the deadline for filing a redacted version of the transcript, which shall be 35 days after the transcript is filed with the Court.

(3) Access. Upon the expiration of the 90-day restriction period set forth in the Notice of Electronic Filing,

(A) if a redacted version of the transcript is not filed and if neither the deadline for filing a Request for Redaction nor the deadline for filing a redacted version of the transcript has been extended, the unredacted version of the transcript will be available for viewing and printing through remote electronic access and at the Clerk's public access computer terminal; and

(B) if a redacted version of the transcript is filed,

(i) the redacted version will be available for viewing and printing through remote electronic access and at the Clerk's public access computer terminal; and

(ii) unless otherwise ordered, the unredacted version will not be available for viewing or printing through remote electronic access but will be available for viewing only at the Clerk's public access computer terminal.

(e) Redacting certain information from a transcript.

(1) Responsibility to review. If a transcript of a hearing, a trial, an examination under Fed.R.Bankr.P. 2004, or a deposition is filed with the Court, the attorneys, and any parties not represented by an attorney, who attended the hearing, trial, examination, or deposition shall review the transcript to determine whether it should be redacted. Each attorney representing a party, and each party not represented by an attorney, shall be responsible for reviewing the opening statement and closing argument made on that party's behalf, any other statements made on that party's behalf, and the testimony of any witness called by that party. In a contested matter, the moving party or the moving party's attorney shall be responsible for reviewing the Court's statements. In an adversary proceeding, the plaintiff or the plaintiff's attorney shall be responsible for reviewing the Court's statements.

(2) Notice of Intent to Request Redaction. A Notice of Intent to Request Redaction of the personal identifiers described in Fed.R.Bankr.P. 9037(a) shall be filed with the Court and shall be served on the official transcriber within seven days after the transcript of a hearing or a trial is filed with the Court.

(3) Request for Redaction under Fed.R.Bankr.P. 9037(a). A Request for Redaction shall be filed with the Court and shall be served on the official transcriber within 21 days after the transcript of a hearing or a trial is filed with the Court. The Request for Redaction shall include a list of the personal data identifiers to be redacted. The list shall describe the personal data identifiers by category (*e.g.*, minor's name, birth date) and shall specify the page numbers and line numbers on which the personal data identifiers appear in the transcript.

(4) Request for Redaction under Rule 9037(d). A motion for a protective order under Fed.R.Bankr.P. 9037(d) to redact information that is not described in Fed.R.Bankr.P. 9037(a) from a transcript of a hearing, a trial, an examination under Fed.R.Bankr.P. 2004, or a deposition shall be filed with the Court and shall be served on parties in interest, which shall include the official transcriber or court reporter. No notice of the motion is required.

(5) Filing of redacted transcript. The official transcriber shall file the redacted version of the transcript of a hearing or trial within 14 days after a Request for Redaction is filed with the Court. A court reporter shall file the redacted version of the transcript of an examination under Fed.R.Bankr.P. 2004 or a deposition within 14 days after a protective order is entered.

(6) Extension of time. A motion to extend any of the deadlines set forth in this rule shall be filed with the Court before the original deadline has expired; shall state the specific extension requested; and shall demonstrate cause for the extension requested. The motion shall constitute notice of the extension sought and shall be served on parties in interest.

REFERENCES: Fed.R.Bankr.P. 9037.

Practice pointers. The fee for a transcript of a hearing or trial, including the deposit amount, may be obtained by calling the Clerk's office in Pierre. The fee will vary with the length of the hearing or trial. The deposit check and final fee check shall be made payable to the Court's current transcriber, "Exceptional Reporting." This fee is *not* paid through the attorney's credit card.

A transcript order form may be downloaded using the link provided on the Court's website at www.sdb.uscourts.gov (see Information/Transcripts/Transcript Request).

Rule 5080-1. Fees: When Due.

(a) Fees due at filing. Any fee due under 28 U.S.C. § 1930 for the filing of certain documents is due at the time the document is filed.

(b) Unpaid fees when case dismissed. Any fee still owed to the Clerk by a debtor or debtor in possession when a case is dismissed shall be paid by the debtor or debtor in possession within 14 days after the order dismissing the case is entered, unless a trustee is serving in the case and has estate funds on hand with which to pay all or part of such fee. In that event, the debtor shall be liable only for the balance remaining after payment by the trustee.

REFERENCES: 11 U.S.C. §§ 1129(a)(12), 1226(b)(1), 1228(a), 1326(b)(1), and 1328(a); and 28 U.S.C. § 1930. See Official Form 3A for the Application to Pay in Installments or Official Form 3B for the Application for Waiver of Filing Fee. See Credit Card Payment Guide on the Court's website under CM/ECF.

Rule 5081-1. Fees: Form of Payment.

(a) Payments by an attorney. An attorney other than an attorney who represents a trustee shall pay any Clerk's fee other than a fee for a certified copy by credit card in accordance with the directives of the Clerk.

(b) Payments by a litigant not represented by an attorney. A party, other than a case trustee, who is not represented by an attorney shall pay any Clerk's fee by cashier's check or money order made payable to "Clerk, U.S. Bankruptcy Court" or, only if the funds are hand-delivered, by cash. The fee must be tendered in the exact amount.

(c) Payments by a case trustee. A case trustee shall pay any Clerk's fee in accordance with the directives of the Clerk and the United States Trustee.

REFERENCES: 11 U.S.C. §§ 1129(a)(12), 1226(b)(1), 1228(a), 1326(b)(1), and 1328(a); and 28 U.S.C. § 1930. See Official Form 3A for the Application to Pay in Installments. See Official Form 3B for the Application for Waiver of Filing Fee. See Credit Card Payment Guide on the Court's website under CM/ECF.

Practice Pointer: If a debtor makes application for waiver of the case filing fee under 28 U.S.C. § 1930(f)(1), the debtor should, when circumstances warrant, also request in the same application a waiver under 28 U.S.C. § 1930(f)(2) of the other fees prescribed by the Judicial Conference under 28 U.S.C. § 1930(b) and (c).

PART VI
COLLECTION AND LIQUIDATION OF THE ESTATE

- 6004-1 Sale of Estate Property.
- 6007-1 Abandonment of Estate Property.
- 6070-1 Payment of Income Tax Refund to Case Trustee.

Rule 6004-1. Sale of Estate Property.

(a) Proposed sale of property (under \$2,500). A notice of a proposed sale of property with an aggregate gross value less than \$2,500 pursuant to Fed.R.Bankr.P. 6004(d) shall conform to the sample at Appendix 6A; shall contain a last date (month, day, year) for objections that is 14 days after service of the notice; and shall be served on parties in interest, including but not limited to any party who has a lien against or other interest in the property.

(b) Proposed sale of property (\$2,500 or more).

(1) Motion. In addition to the information required by Fed.Rs.Bankr.P. 2002(c)(1) and 6004(g), a motion for authority to sell property with an aggregate gross value of \$2,500 or more shall describe the property to be sold and shall state the property's value, how that value was determined, and the terms and conditions of the proposed sale. If the property is to be sold by private sale, the motion shall also state the proposed buyer(s) and the sale price. If the property is to be sold at public auction, the motion shall also state the auction date, time, and location, the name of any opening bidder (if any), the amount of any opening bid (if any), the amount of any minimum bid (if any), and the amount of any minimum bidding increments.

(A) Any request that the Court's order authorizing the use, sale, or lease of property not be stayed under Fed.R.Bankr.P. 6004(h) shall be included in the motion.

(B) Any request for a waiver of the requirement that a report of sale be filed pursuant to Fed.R.Bankr.P. 6004(f)(1) shall be included in the motion.

(2) Notice. A notice of motion for authority to sell property with an aggregate gross value of \$2,500 or more shall conform to Fed.R.Bankr.P. 2002(c)(1) and the sample at Appendix 2F and shall contain a last date (month, day, year) for objections that is 21 days after the service of the motion and notice of motion.

(3) Service. A motion under paragraph (1) above shall be served on parties in interest, including but not limited to any party who has a lien against or other interest in the property. A notice under paragraph (2) above shall be served on all creditors and other parties in interest.

(c) Report of sale or no sale. A report of sale or no sale under Fed.R.Bankr.P. 6004(f)(1) shall conform to the sample at Appendix 6B.

REFERENCES: 11 U.S.C. § 363; Fed.Rs.Bankr.P. 2002(c)(1) and 6004.

Practice Pointers: A chapter 7 trustee should file a motion for authority to sell property when he proposes to allow a debtor to retain estate property. A chapter 7 trustee should file a motion for turnover of property if the debtor is holding property in excess of claimed exemptions, the trustee needs physical possession of the property to sell it, and the debtor fails to cooperate.

If any party is served by mail, the notice periods stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

Rule 6007-1. Abandonment of Estate Property.

(a) Notice of proposed abandonment of estate property by a trustee or debtor in possession. A notice of proposed abandonment by a chapter 7 trustee, a chapter 11 trustee, or a debtor in possession shall:

(1) conform to the sample at Appendix 6C and contain a last date (month, day, year) for objections that is 14 days after the service of the notice;

(2) describe the property to be abandoned, its value, how the value was determined, and the facts and circumstances that demonstrate why the property is burdensome or of inconsequential value to the estate; and

(3) be served on all creditors and other parties in interest, including any party who has a lien against or other interest in the property to be abandoned.

(b) Motion to compel abandonment of estate property.

(1) Motion. A motion to compel a chapter 7 trustee, a chapter 11 trustee, or a debtor in possession to abandon certain property from the estate shall describe the property to be abandoned, its value, how the value was determined, and the facts and circumstances that demonstrate why the property is burdensome or of inconsequential value to the estate.

(2) Notice. A notice of a motion to compel abandonment shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 14 days after service of the motion and notice of motion.

(3) Service. A motion to compel abandonment and a notice of motion shall be served on all creditors and other parties in interest, including but not limited to any party who has a lien against or other interest in the property to be abandoned.

(c) Order compelling abandonment. If a motion to compel abandonment of estate property is filed, a proposed order that conforms to the sample at Appendix 6D shall be submitted to the Court with the motion.

REFERENCES: 11 U.S.C. §§ 554 and 725; Fed.R.Bankr.P. 6007.

Practice Pointers: If any party is served by mail, the notice period stated above must be increased by three days pursuant to Fed.R.Bankr.P. 9006(f).

In addition to the sample order compelling abandonment in Appendix 6D, a sample order granting relief from the automatic stay *and* compelling abandonment is available on the Court's website at www.sdb.uscourts.gov.

Rule 6070-1. Payment of Income Tax Refund to Case Trustee.

(a) Request for turnover of tax refund. In any chapter 7, 12, or 13 case in which the trustee determines the bankruptcy estate has an interest in a tax refund to which the debtor is entitled, the trustee may notify the Internal Revenue Service in writing of the estate's interest and provide a copy of the Clerk's notice of commencement of case to the Internal Revenue Service. The trustee shall provide a copy of the trustee's letter to the Internal Revenue Service to the debtor and the debtor's attorney.

(b) Turnover of tax refund. Upon being notified in writing of the bankruptcy estate's interest in the debtor's tax refund, the Internal Revenue Service shall promptly forward the entire refund to the trustee.

(c) Debtor's portion of tax refund. Upon receipt of the debtor's tax refund, the trustee shall promptly forward any portion of the tax refund to which the estate is not entitled to the debtor.

PART VII ADVERSARY PROCEEDINGS

7001-1	Electronic Filing.
7001-2	Adversary Complaints: Required Content.
7005-2	Discovery.
7007-1	Motions in Adversary Proceedings.
7010-2	Caption for Documents in an Adversary Proceeding.
7054-1	Judgment Costs.
7055-1	Default Judgment.
7056-1	Summary Judgment.

Rule 7001-1. Electronic Filing. Any document to be filed with the Court by an attorney in an adversary proceeding must be filed electronically in the manner prescribed in the Court's Electronic Case Filing Administrative Procedures.

REFERENCES: Fed.R.Civ.P. 5(e); Fed.R.Bankr.P. 7005.

Rule 7001-2. Adversary Complaints: Required Content.

(a) General. A complaint in an adversary proceeding shall set forth with specificity the statutory or case law basis for the relief sought.

(b) Complaint objecting to discharge. A complaint objecting to the debtor's discharge shall specify the particular subsection or subsections of 11 U.S.C. § 727(a) under which relief is sought.

(c) Complaint to determine dischargeability. A complaint to determine the dischargeability of a particular debt shall specify the particular subsection or subsections of 11 U.S.C. § 523(a) under which relief is sought. If relief is sought under 11 U.S.C. § 523(a)(2), the complaint shall further specify whether relief is sought under subsection (a)(2)(A) or subsection (a)(2)(B).

Rule 7005-2. Discovery.

(a) Filing required. Notwithstanding D.S.D. CIV. LR 26.1, all original discovery documents, including requests for admissions, interrogatories, requests for production of documents, answers, responses, and deposition transcripts, but excluding any documents produced in response to a request for production of documents, shall be filed with the Court. If an answer or response to a discovery request is voluminous,

the filing party shall confer with the Clerk and file the answer or response only as directed by the Clerk.

(b) Separate filings. Different methods of discovery shall not be combined in a single request. Answers and responses to different discovery requests shall not be combined in a single answer or response.

(c) Discovery transcripts. Unless otherwise directed by the Clerk or Court, transcripts of depositions or Rule 2004 examinations shall be filed in the manner directed by Bankr. D.S.D. R. 5077-1.

Rule 7007-1. Motions in Adversary Proceedings. A motion in an adversary proceeding shall be filed separately from any pleading and shall be served on parties in interest. In the absence of a specific statute, rule, or order to the contrary, no notice of motion is required.

REFERENCES: Fed.R.Civ.P. 7; Fed.R.Bankr.P. 7007.

Rule 7010-2. Caption for Documents in an Adversary Proceeding. The caption on a document in an adversary proceeding shall incorporate the full caption for the bankruptcy case related to the adversary proceeding, as provided by Bankr. D.S.D. R. 9004-2, and the complete legal name of all parties, including all punctuation in the legal name; shall comply with Fed.Rs.Bankr.P. 7008 and 7010; and shall conform to Official Form 16D and the sample at Appendix 7A.

REFERENCES: 11 U.S.C. § 342(c); Fed.R.Civ.P. 10; Fed.Rs.Bankr.P. 7008, 7010, and 9004(b); and Official Forms 16A and 16D. For the caption for a bankruptcy case, see Bankr. D.S.D. R. 9004-2.

Practice Pointers: If, for example, the defendant's legal name is Dakotaland Associates, L.L.C., do not abbreviate "Associates" or delete the periods in the abbreviation for limited liability company in the caption or in the opening paragraph of a pleading, motion, or response. So many financial institutions and other businesses have numerous related entities with similar names, being persnickety regarding the name is the only way of insuring correct identification of a party.

Fill-able "merge" forms in both Word and WordPerfect to create captions are available on the Court's website at www.sdb.uscourts.gov under Forms/Local/Captions.

Rule 7054-1. Judgment Costs. Costs allowed under Fed.R.Bankr.P. 7054(b) shall be taxed by the Clerk and reviewed by the Court as set forth in D.S.D. CIV. LR 54.1.

REFERENCES: 28 U.S.C. §§ 1920 and 1924; Fed.R.Civ.P. 54; D.S.D. CIV. LR 54.1; Fed.R.Bankr.P. 7054.

Rule 7055-1. Default Judgment. An application for default judgment and a supporting affidavit of default shall be filed with the Court and served on the defaulting defendant and the defendant's attorney, if known. A proposed order directing entry of default judgment and a proposed default judgment that conform to the samples at Appendices 7B and 7C shall be submitted to the Court with the application.

Rule 7056-1. Summary Judgment.

(a) Statements re: material facts.

(1) Statement by the movant. A motion for summary judgment shall be accompanied by a separate, concise statement of the material facts the movant contends are not genuinely disputed. Each material fact shall be set forth in a separately numbered paragraph and shall contain a specific citation to the record. The statement shall be docketed as an attachment to the motion.

(2) Statement by any objector. An objection to a motion for summary judgment shall be accompanied by a separate, concise statement of the material facts the objector contends are genuinely disputed. Each disputed material fact shall be set forth in a separately numbered paragraph and shall contain a specific citation to the record, including a citation to the movant's statement of the material facts. The statement shall be docketed as an attachment to the objection.

(3) Uncontroverted facts. All material facts set forth in the movant's statement are deemed admitted unless specifically controverted by the objecting party's statement.

(b) Briefs. A motion for summary judgment or an objection to a motion for summary judgment shall be accompanied by a brief that sets forth that party's position and specific legal authority in support of that position. The brief shall be docketed as an attachment to the motion or objection.

PART VIII
APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL

8007-1 Transmission of Record on Appeal.

Rule 8007-1. Transmission of Record on Appeal. Unless otherwise ordered by the Bankruptcy Appellate Panel or District Court, the Bankruptcy Clerk shall retain the original record in all appeals, except exhibits and transcripts, which shall be provided to the Bankruptcy Appellate Panel or District Court in the manner directed by that court. Notwithstanding Fed.R.Bankr.P. 8006, a party filing a designation of items to be included in the record shall not provide copies of the items designated to the Bankruptcy Clerk.

REFERENCES: Fed.Rs.Bankr.P. 8006 and 8007.

Practice Pointer: Because the appellate courts have access to the Bankruptcy Court's electronic records, the transmission of a record on appeal has been greatly simplified.

PART IX GENERAL PROVISIONS

9001-1	Definitions.
9004-1	General Requirements for Documents Submitted for Filing.
9004-2	Captions for Documents in a Bankruptcy Case.
9004-3	Filing and Serving Documents; Certificates of Service.
9010-1	Notice of Appearance.
9014-1	Objection or Other Response in Contested Matter.
9014-2	Withdrawal of Document in Contested Matter.
9014-3	Motion for Judgment on the Pleadings in Contested Matter.
9019-1	Agreements.
9021-1	Service of Orders; Orders upon Default or Satisfaction of a Condition.
9070-1	Exhibits.
9072-1	Proposed Orders.
9074-1	Telephonic Hearings or Conferences.

Rule 9001-1. Definitions. These local rules are subject to the rules of construction in 11 U.S.C. § 102, and the words and phrases used herein shall be defined by reference to 11 U.S.C. §§ 101, 902, and 1101 and Fed.R.Bankr.P. 9001. In addition, the following words, phrases, or abbreviations used in these local rules have the meanings indicated:

- (1) "Fed.R.Bankr.P." means the Federal Rules of Bankruptcy Procedure promulgated by the United States Supreme Court;
- (2) "Fed.R.Civ.P." means the Federal Rules of Civil Procedure promulgated by the United States Supreme Court;
- (3) "Official Form" means the Official Bankruptcy Forms or the Director's Procedural Forms;
- (4) "D.S.D. CIV. LR" means the Local Rules of Practice (civil) for the United States District Court for the District of South Dakota;
- (5) "S.D.C.L." means the South Dakota Codified Laws;
- (6) "debtor" means individual and joint debtors, unless otherwise stated; and
- (7) "parties in interest," "such other parties as the Court may designate," or similarly described entities as used in the Code, the Federal Rules of Bankruptcy Procedure, or these local rules, unless otherwise directed by the Court, are:

(A) the entity or entities against whom relief is sought, including the parties to any affected adversary proceeding;

(B) the debtor;

(C) the attorney for the debtor;

(D) the case trustee or examiner, if any;

(E) in a chapter 11 case, the 10 largest unsecured creditors, unless and until the United States Trustee appoints a committee of unsecured creditors;

(F) the chairperson and the attorney of any committee authorized under the Code;

(G) the United States Trustee;

(H) the entities, if any, listed on the docket as having requested notice under Fed.Rs.Bankr.P. 2002(i) or 9010(b); and

(I) any entity claiming a lien on or other interest in any affected property.

REFERENCES: 11 U.S.C. §§ 101, 102, 902, and 1101; 28 U.S.C. § 2075; Fed.R.Civ.P. 83; Fed.Rs.Bankr.P. 2002, 9001, and 9029.

Practice Pointer: When serving any document on "parties in interest," the serving party may assume the debtor's attorney, any attorney for a committee authorized under the Code, the United States Trustee, and any party who has requested notice under Fed.Rs.Bankr.P. 2002(g)(1) or 9010(b) will always receive electronic service. The server does not need to serve them by mail or include their names and addresses on the certificate of service.

Rule 9004-1. General Requirements for Documents Submitted for Filing.

(a) General requirements for all documents submitted for filing.

(1) Conventional (paper). Each document filed conventionally (by paper) shall be on white, 8 ½" x 11" paper and have one-inch margins. All documents shall be typewritten using one simple font and shall be without erasures, excessive correction fluid, or other marks materially defacing them. Signatures shall be in blue ink.

(2) Electronic. Any document filed electronically shall conform to the Court's Electronic Case Filing Administrative Procedures.

(3) Captioned and signed. Each document, excluding exhibits attached to a document, shall include an appropriate caption as prescribed by Bankr. D.S.D. R. 9004-2 and shall be signed and dated. If the document is signed by an attorney, the attorney's mailing address, telephone number, fax number, and e-mail address shall be included in the attorney's signature block.

(4) Orientation. The page orientation of each document shall be "portrait," not "landscape."

(b) Exhibits attached to a document. Exhibits attached to a document shall be typewritten, printed, or otherwise reproduced in clear, legible, and permanent form and be designated thereon as an exhibit, for example, "EXHIBIT A." If possible, the page orientation of an attachment shall be "portrait," not "landscape."

(c) Non-disclosure of personal data identifiers. A party shall not include any party's personal data identifiers in any document, unless specifically directed to do so by an order, a statute, a Federal Rule of Bankruptcy Procedure, an Official Form, or these local rules. If a party must include a Social Security number, a taxpayer identification number, or an account number in a document, the party shall provide only the last four digits of that number. If a party must refer to a minor child in a document, the party shall disclose, at most, the minor child's initials and the year in which the minor child was born. The party filing a document is solely responsible for redacting any personal data identifiers. The Clerk shall have no responsibility for doing so and no liability for not doing so.

(d) Copies. A party shall not provide extra copies of any document filed with the Court, unless specifically directed to do so by the Code, a Federal Rule of Bankruptcy Procedure, these local rules, or an order. If directed to provide copies of a document filed with the Court, the party shall label each copy, "COPY."

(e) Filing under seal. A motion to file a document under seal shall identify the document and shall demonstrate cause for filing the document under seal. A copy of the motion shall be served on parties in interest. A notice of the motion is not required.

(f) Briefs. Notwithstanding D.S.D. CIV. LR 7.2(A), a party need not submit a brief in support of a motion or application, unless specifically directed to do so by these local rules or ordered by the Court.

REFERENCES: Fed.Rs.Bankr.P. 7010, 9004, and 9011; D.S.D. CIV. LR 7.2(A).

Rule 9004-2. Captions for Documents in a Bankruptcy Case.

(a) Information required in a case caption. Except as provided in paragraph (b) below, the caption on a document in a bankruptcy case shall conform to Fed.Rs.Bankr.P. 1005, 2002(n), and 9004, the Official Form 16A, and a sample at Appendix 9A (individual debtor), 9B (joint debtors), or 9C (business debtor), and shall include:

- (1) the debtor's full name;
- (2) the debtor's full employer identification number, if any;
- (3) the last four digits of an individual debtor's Social Security number;
- (4) the last four digits of an individual's taxpayer identification number, if any, or the full tax identification number for any non individual debtor;
- (5) all names used by the debtor within the previous eight years. Other names presently used shall be preceded by the letter "aka" (no periods or other marks between the letters) to represent "also known as." Names formerly used shall be preceded by the letters "fka" (no periods or other marks between the letters) to represent "formerly known as"; and
- (6) as the title of the document, the name of the party who has offered it and a short description of the pleading.

(b) Additional information required in certain captions. If a debtor amends his schedules to add a creditor, the notice served on the added creditor shall comply with 11 U.S.C. § 342(c) and shall include the debtor's full taxpayer identification number, if any, but the notice filed with the Court shall contain only the last four digits of the debtor's taxpayer identification number.

REFERENCES: 11 U.S.C. § 342(c); Fed.R.Civ.P. 10; Fed.Rs.Bankr.P. 1005, 2002(n), 9004(b), and 9037; Official Form 16A. For caption for an adversary proceeding, *see* Bankr. D.S.D. R. 7010-2.

Practice Pointer: Fill-able "merge" form captions in both Word and WordPerfect are available on the Court's website at www.sdb.uscourts.gov under Forms/Local/Captions.

Rule 9004-3. Filing and Serving Documents; Certificates of Service.

(a) Filing. All documents shall be filed with the Court on the same date they are served on the parties entitled to receive them. If filed conventionally (by paper document delivered to the Clerk), a document is deemed filed when received by the Clerk, not when mailed by the filer. If filed electronically, a document is deemed filed on the date and at the time reflected on the Court's Notice of Electronic Filing.

(b) Serving.

(1) Any document filed with the Court shall be served by the filing party pursuant to the applicable Code section, Federal Rule of Bankruptcy Procedure, or local rule; provided, however, the filing party need not serve the document on any party to whom the Court has transmitted a Notice of Electronic Filing in the manner outlined in the Court's Electronic Case Filing Administrative Procedures.

(2) Service of a document shall be made on the same day it is filed or the next business day thereafter.

(3) If the Code, the Federal Rules of Bankruptcy Procedure, or these local rules require a document to be served on "parties in interest," "such other parties as the Court may designate," or similarly described entities, the document shall be served on parties in interest as defined by Bankr. D.S.D. 9001-1(7).

(4) If the United States or one of its officers or entities is deemed a party in interest, pleadings, notices, orders, and other documents shall be separately served on both the officer or entity and on the U.S. Attorney.

(5) If the State of South Dakota or one of its officers or entities is deemed a party in interest, pleadings, notices, orders, and documents shall be separately served on both the officer or entity and on the Attorney General.

(6) If a county within the State of South Dakota or one of its officers or entities is deemed a party in interest, pleadings, notices, orders, and other documents shall be separately served on both the officer or entity and on the State's Attorney for that county.

(c) Current mailing list. The movant shall use a mailing list generated by the Court's electronic filing system for the case or adversary proceeding on the date service is made.

(d) Certificate of service. A certificate of service shall be filed with each document

served. The certificate shall conform to the sample at Appendix 9D and shall not include the names and addresses of parties who will be served electronically by the Clerk. If it is filed electronically, the certificate shall be filed as an attachment to the document served.

REFERENCES: Fed.Rs.Bankr.P. 2002, 9006, 9013, and 9014.

Practice Pointers: A list of common pleadings and the notice and service requirements for each is maintained on the Court's website, www.sdb.uscourts.gov. Click on Information/Practice Pointers/Notice and Service Requirements.

The Clerk, upon request and without charge, will provide any party who files a document conventionally (by paper) with a copy of the current mailing list. The current mailing list may be obtained electronically by going to Reports or Utilities, selecting Mailings, and then selecting Mailing Labels by Case. If a party has filed a preferred address, it will be indicated here with a "(p)" before the party's name and address.

When serving any document, the serving party may assume the debtor's attorney, any attorney for a committee authorized under the Code, any case trustee, the United States Trustee, and any party who has requested notice under Fed.Rs.Bankr.P. 2002(i) or 9010(b) will always receive electronic service. The server does not need to serve these parties by mail or include their names and addresses on the certificate of service. The notice of electronic filing, which is "attached" to each electronic document, constitutes the record of who has been served electronically.

9010-1. Notice of Appearance.

(a) Consent to electronic service. Unless otherwise ordered, any person, as defined by 11 U.S.C. § 101(41), governmental entity, or an attorney or other agent for a person or governmental entity, who files a notice of appearance under Fed.R.Bankr.P. 9010(b) is deemed to have consented to electronic service of all documents in that case.

(b) Provision of electronic mailing address. Unless otherwise ordered, any notice of appearance under Fed.R.Bankr.P. 9010(b) shall include, within the notice, the filer's electronic mailing address. An attorney who files a notice of appearance under Fed.R.Bankr.P. 9010(b) may provide only the attorney's own name and electronic mailing address for service. If the notice of appearance under Fed.R.Bankr.P. 9010(b) does not contain the filer's electronic mailing address, the filer shall supply it to the Clerk immediately upon request.

Rule 9014-1. Objection or Other Response in Contested Matter.

(a) Content of objection or other response. An objection or other response to a motion, application, plan, or other request for relief shall comply with Fed.Rs.Civ.P. 8, 10, and 12. A general denial or mere request for a hearing is insufficient.

(b) Filing and service of an objection or other response. An objection or other response to a motion, application, plan, or other request for relief shall be filed with the Court on or before the last date for objections set forth in the notice or applicable local rule and shall be served on the movant, applicant, or plan proponent and other parties in interest; provided, however, service on any party other than the debtor may be made on that party's attorney if permitted under Fed.R.Bankr.P. 9014(b) and Fed.R.Civ.P. 5(b).

(c) Documents or actions attendant to a response. In a case under any chapter, if a response to a motion or to an objection to exemptions indicates the debtor will amend a schedule to resolve the contested matter in whole or in part, the debtor shall file and, if required, give notice of the amendment at the same time the response is filed. In a chapter 12 or chapter 13 case, if a response to a motion indicates the debtor will file a modified plan or a motion to modify a confirmed plan to resolve the contested matter in whole or in part, the debtor shall file and give notice of the modified plan or the motion to modify confirmed plan at the same time the response is filed.

REFERENCES: Fed.Rs.Civ.P. 8 and 10; Fed.Rs.Bankr.P. 9006, 9007, and 9014.

Rule 9014-2. Withdrawal of Document in Contested Matter.

(a) Withdrawal. A party may withdraw any document that party filed in a bankruptcy case or a contested matter either by filing a withdrawal that conforms to the sample at Appendix 9E and serving the withdrawal on parties in interest or, if the party is permitted to file electronically, by filing a "text entry" withdrawal and advising any party who will not receive electronic notice from the Clerk of the withdrawal. If the debtor is represented by an attorney, the debtor's attorney shall be responsible for informing the debtor of any "text entry" withdrawal. This rule shall not apply to the withdrawal of a proof of claim, which is governed by Fed.R.Bankr.P. 3006, or to the withdrawal of a document in an adversary proceeding.

(b) Effect of filing withdrawal on contested matter. Unless ordered otherwise, if a motion, application, plan, objection to a proof of claim, or objection to a claimed exemption is withdrawn in compliance with paragraph (a) above, the issues raised by the withdrawn document will be deemed moot.

(c) Effect of filing withdrawal on application of Fed.R.Bankr.P. 9011(c). Nothing in this rule shall affect or alter the application of Fed.R.Bankr.P. 9011(c).

Rule 9014-3. Motion for Judgment on the Pleadings in Contested Matter. In addition to the other Federal Rules of Bankruptcy Procedure, and by reference the Federal Rules of Civil Procedure, made applicable in contested matters by Fed.R.Bankr.P. 9014(c), Fed.R.Civ.P. 12(c) shall also apply in contested matters.

Rule 9019-1. Agreements.

(a) Application of rule. For the purposes of this rule, an agreement encompasses any agreement, compromise, settlement, or stipulation between or among opposing parties. This rule applies to all agreements except as provided by Fed.Rs.Bankr.P. 4001(d) and Bankr. D.S.D. Rs. 4001-1(e), 4001-1(f), 4001-2(c), 4001-2(d), 4001-3(c), and 4001-3(d).

(b) Agreements involving a trustee or debtor in possession.

(1) Adversary proceeding. Except as provided by paragraph (c)(2) below, a motion to approve an agreement between a trustee or a debtor in possession and another party to resolve a pending adversary proceeding shall be captioned for and filed in the main case; shall briefly summarize the parties' respective positions; shall describe the agreement; and shall demonstrate cause for approving the agreement. If the agreement has been reduced to writing, a copy of the agreement shall be attached to the motion. The motion and a notice of motion shall be served on all creditors and other parties in interest. The notice of motion shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 21 days after service of the motion and notice of motion.

(2) Contested matter pending. An agreement between a trustee or a debtor in possession and another party to resolve a pending contested matter that does not resolve any issues other than those specifically raised in the contested matter may be incorporated in an agreed order that conforms to the sample at Appendix 9F. If the agreement resolves any issues other than those specifically raised in the contested matter, the agreement shall be noticed for objections as provided in paragraph (3) below.

(3) No contested matter or adversary proceeding pending. A motion to approve an agreement between a trustee or a debtor in possession and another party to resolve a matter that has not been presented to the Court by complaint, motion, application, or other request for relief shall briefly summarize the parties' respective positions; shall describe the agreement; and shall demonstrate cause for approving the agreement. If the agreement has been reduced to writing, a copy of the agreement shall be attached to the motion. The motion and a notice of motion shall be served on all creditors and other parties in interest. The notice shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last

date (month, day, year) for objections that is 21 days after service of the motion and notice of motion.

(c) Agreements involving a chapter 7 debtor.

(1) Dischargeability of a debt. A motion to approve a post-petition agreement between a chapter 7 debtor and a creditor regarding the dischargeability of a particular debt shall describe the agreement. If the agreement has been reduced to writing, a copy of the agreement shall be attached to the motion. No notice of the motion is required, unless the agreement affects the bankruptcy estate. If an adversary proceeding has been commenced, the motion shall be captioned for and filed in the adversary proceeding. If an adversary proceeding has not been commenced, the motion shall be captioned for and filed in the main case. A proposed order approving the agreement and, if appropriate, a proposed judgment shall be submitted to the Court with the motion.

(2) Denial or revocation of discharge.

(A) A motion to approve a post-petition agreement between a chapter 7 debtor and a creditor or other party in interest regarding the denial or revocation of the debtor's discharge shall describe the agreement. If the agreement has been reduced to writing, a copy of the agreement shall be attached to the motion. If an adversary proceeding has been commenced, the motion shall be captioned for and filed in the adversary proceeding. If an adversary proceeding has not been commenced, the motion shall be captioned for and filed in the main case. The motion and a notice of motion shall be served on all creditors and other parties in interest. The notice of motion shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 21 days after service of the motion and notice of motion. A proposed order and, if appropriate, a proposed judgment shall be submitted to the Court with the motion.

(B) A motion to approve an agreement between a debtor and a chapter 7 trustee regarding the revocation of a debtor's discharge for the debtor's failure to comply with an earlier order shall describe the agreement. If the agreement has been reduced to writing, a copy of the agreement shall be attached to the motion. If under the agreement the debtor will make the bankruptcy estate whole, including reimbursing the estate for any adversary filing fee, no notice of the motion is required. Otherwise, the motion and a notice of motion shall be served on all creditors and other parties in interest. The notice of motion shall conform to Bankr. D.S.D. R. 2002-1(a) and shall contain a last date (month, day, year) for objections that is 21 days after service of the motion and notice of motion. A proposed order and, if appropriate, a

proposed judgment shall be submitted to the Court with the motion.

REFERENCE: Fed.R.Bankr.P. 9019.

Rule 9021-1. Service of Orders; Orders upon Default or Satisfaction of a Condition.

(a) Service of orders. Unless otherwise directed by the Court and except as provided by Bankr. D.S.D. R. 4072-1(c), the Clerk shall serve all decisions, orders, and judgments on the parties required by the Code, the Federal Rules of Bankruptcy Procedure, a local rule, and the order.

(b) Entry of orders upon default or satisfaction of a condition. A stipulation, judgment, or order that provides for the entry of an order dismissing or converting a case, granting relief from the automatic stay, or granting other relief without further notice or hearing upon the occurrence of a stated condition shall require the moving party to file an affidavit or other written statement confirming the stated condition has occurred, a certificate of service reflecting service of the affidavit or other written statement on the party against whom relief is sought, and a proposed order.

REFERENCES: 11 U.S.C. §§ 362 and 363; S.D.C.L. § 15-16-20; Fed.Rs.Civ.P. 8, 10, and 58; Fed.Rs.Bankr.P. 2002, 4001, 7008, 7010, 9004, 9006, 9007, 9011, 9013, 9014, and 9021; Introduction and General Instructions-Official Bankr. Forms; Bankr. D.S.D. R. 4072-1.

Rule 9070-1. Exhibits.

(a) Copies. A party shall provide the original and two copies of each exhibit for the Court and one copy of each exhibit for each opposing party. If an exhibit is in color, all copies of that exhibit shall be in color. If a party intends to offer more than six exhibits, the original exhibits and all copies of those exhibits shall, to the extent possible, be organized in binders, indexed, and tabbed. The index shall conform to the sample at Appendix 9H.

(b) Marking. The Courtroom Deputy Clerk will mark the original exhibits. Unless otherwise ordered, the party who will offer an exhibit shall mark all copies of that exhibit before the hearing or trial.

Rule 9072-1. Proposed Orders.

(a) Submission of proposed orders. A proposed order granting a motion for relief from stay, a motion to compel abandonment, a motion to discharge judgments, or an application for compensation or reimbursement of expenses of \$1,000.00 or less shall

be submitted to the Court when the motion or application is filed. A proposed order granting any other motion, application, objection to claimed exemptions, objection to a proof of claim, or plan that is not contested, other than those listed on Appendix 9I, shall be submitted to the Court as soon as the deadline for objections or other responses has passed. All proposed orders shall be submitted electronically in Word or WordPerfect format to *proposed_orders@sdb.uscourts.gov*.

(b) Review of proposed order by parties in interest.

(1) At the conclusion of a hearing or trial, a party in interest may request an opportunity to review a proposed order before it is entered by the Court. If the request is granted, the party preparing the proposed order shall serve the proposed order and a copy of any document referred to or incorporated in the proposed order on the party that made the request and shall file with the Court a certificate of service that conforms to the sample at Appendix 9J, specifically states service was made pursuant to this rule, and includes as an attachment a copy of the proposed order and copies of any documents referred to or incorporated in the proposed order.

(2) Any objection to the proposed order shall state why the proposed order should not be entered; shall include as an attachment an alternate proposed order; and shall be filed within seven days after service of the proposed order.

(3) If the parties cannot promptly resolve any objection to the proposed order and do not submit an agreed order, the Court may enter one of the orders submitted by the parties, enter its own order, or set the matter for hearing.

REFERENCE: Fed.R.Bankr.P. 9006.

Practice Pointer: Appendix 9I lists those orders that are entered by the Court as an electronic docket text only or are otherwise prepared by the Court. The Bankruptcy Bar will receive notice through the Clerk's Update whenever a certain type of order is added to or deleted from this list.

Rule 9074-1. Telephonic Hearings or Conferences.

(a) Telephonic hearings or conferences set by order or notice. If an order or notice sets a hearing on a contested matter or a pre-trial conference in an adversary proceeding and states the hearing or conference will be conducted by telephone, the Court will initiate the call to the following parties or their attorney: the movant or plaintiff, each respondent or defendant who has filed an answer, and the case trustee, if the case trustee is a party to the action. Other parties may request to appear by contacting the Courtroom Deputy Clerk at least one business day before the scheduled hearing or conference.

(b) Request to appear by telephone at an in-court hearing. If a hearing on a contested matter or a pre-trial conference in an adversary proceeding is set by order or notice to be conducted in the courtroom, and if none of the participating parties will offer any evidence, out-of-town parties or their attorneys may request to appear by telephone. The request shall be made to the Courtroom Deputy Clerk at least one business day before the scheduled hearing or conference. Before requesting to appear by telephone, the party making the request is responsible for consulting with the other parties and ascertaining whether they will be offering evidence.

(c) Receipt of Evidence at Telephonic Hearings. Witnesses may not testify at a telephonic hearing, irrespective of any agreement among the parties. Exhibits will not be received at a telephonic hearing, unless prior to the hearing the parties advise the Court they have stipulated the exhibits may be admitted into evidence.